Pacific Micronesia Corporation, d/b/a DAI-ICHI Hotel Saipan Beach *and* Hotel Employees & Restaurant Employees, Local 5, AFL–CIO and Commonwealth Labor Federation. Case 37–CA–5262

February 22, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

Pursuant to a charge and an amended charge filed on September 17 and 28, 1998, respectively, the General Counsel of the National Labor Relations Board issued a complaint on October 9, 1998, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 37–RC–3739. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, with affirmative defenses.

On December 28, 1998, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On January 4, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its objections to the election and the Board's unit determination in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that, with the exception noted, infra, there are no factual issues warranting a hearing with respect to the Union's request for information. The Respondent's answer admits that by letter dated September 2, 1998, the Union requested it to furnish it with the following information:

1. Each employee's date of hire, date of birth, sex, average number of hours worked each year since date of hire, date of contract expiration (where applicable), the classification indicated in each employee's contract (where applicable), the actual classification in which the employee works, wage rate, address and telephone number.

2. Weighted average wage rate. (Total bargaining unit wages paid divided by total hours worked of the employees who receive such monies.)

3. Weighted average income from tips or service charges and the names and classifications of each employee[s] receiving such tips. (Weighted average means total monies paid to employees divided by the total hours worked on the employees who receive such monies.)

4. Cost per hour of health insurance, broken down by cost for contract workers and resident workers. Plan documents and/or insurance policies for medical, pension, workers compensation, disability benefits and/or separation allowances. Cost per hour providing the aforementioned benefits for bargaining unit employees.

5. Cost per hour of all other employee fringe benefits; including but not limited to: holiday pay, sick leave pay, vacation pay, housing, meals, and other paid leaves.

6. Copies of most recent employee handbook, rules and regulations governing employee conduct, and all revisions thereto.

7. Copies of the standard contract utilized for the employment of contract workers by the Hotel. If no standard contract exists, the Union would then request a copy of each contract worker's contract.

8. Copies of contracts between the Hotel and any Company that provides employees to work in the Hotel in work that would otherwise be considered bargaining unit work.

The Respondent's answer admits that it refused to provide this information to the Union. Further, although the Respondent's answer denies that the information requested is necessary and relevant for the Union's duties as the exclusive bargaining representative of the unit employees, it challenges only the relevance of item 8 in its response to the Notice to Show Cause.

Information concerning work that "would otherwise be considered bargaining unit work" is not presumptively

relevant and thus, not appropriate for resolution in a summary judgment proceeding. Accordingly, we shall remand this issue to the Regional Director for further appropriate proceedings.

The other requested information is of the type that, under well established principles, is presumptively relevant and must be furnished on request. See, e.g., *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp*., 233 NLRB 109 (1997).

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and, with the exception noted, to furnish it the information requested.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation of the Commonwealth of the Northern Mariana Islands (CNMI) with an office and place of business located in Garapan, on the Island of Saipan, has been engaged in the operation of a hotel and restaurant providing food and lodging.

During the calendar year ending December 31, 1997, the Respondent, in conducting its business operations, derived gross revenues in excess of $500,000 and purchased and received at its Garapan, Saipan, CNMI facility products, goods, and materials valued in excess of $5000 which originated from points located outside the CNMI.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.[1]

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the second election held February 5, 1998, the Union was certified on March 30, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time employees employed by the Employer in the Commonwealth of the Northern Mariana Islands; excluding all managerial employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since about September 2, 1998, the Union, by letter, has requested the Respondent to bargain and to furnish information and, since about September 11, 1998, the Respondent has failed and refused. With the exception noted, supra, we find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after September 11, 1998, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested consistent with this decision.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Pacific Micronesia Corporation d/b/a DAI-ICHI Hotel Saipan Beach, Garapan, on the Island of Saipan, CNMI, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Hotel Employees & Restaurant Employees, Local 5, AFL-CIO and Commonwealth Labor Federation, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

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[1] Although the Respondent states that it is without knowledge or information sufficient to form an opinion of the truth of the allegation that the Commonwealth Labor Federation is a labor organization, we do not find that the Respondent's allegation raises an issue warranting a hearing. In his Decision and Direction of Election in the underlying representation case, the Acting Regional Director found the Federation to be a labor organization and did so based on the Respondent's stipulation. The Respondent did not seek review of that finding. See Sec. 102.67(f) of the Board's Rules ("Failure to request review shall preclude . . . parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding.")

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time employees employed by the Employer in the Commonwealth of the Northern Mariana Islands; excluding all managerial employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on September 2, 1998, with the exception of item 8.

(c) Within 14 days after service by the Region, post at its facility in Garapan, on the Island of Saipan, CNMI, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 11, 1998.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 22, 1999

Sarah M. Fox, Member

Wilma B. Liebman, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Hotel Employees & Restaurant Employees, Local 5, AFL–CIO and Commonwealth Labor Federation as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time employees employed by us in the Commonwealth of the Northern Mariana Islands; excluding all managerial employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union information necessary and relevant to the role as collective-bargaining representative.

PACIFIC MICRONESIA CORPORATION, d/b/a
DAI-ICHI HOTEL SAIPAN BEACH

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."